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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

J.J.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY SERVICES AGENCY,

Real Party in Interest.

F078707

(Super. Ct. No. JVDP-18-000117)

OPINION

THE COURT[*]

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q. Ameral, Judge.

William E. Mussman III for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County Counsel, for Real Party in Interest.

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[*] Before Poochigian, Acting P.J., Meehan, J. and DeSantos, J.

J.J. (mother) seeks an extraordinary writ from the juvenile court's dispositional orders denying her reunification services under Welfare and Institutions Code section 361.5, subdivision (b)(10)[1] and setting a section 366.26 hearing as to her now seven-month-old daughter, S.H. Mother contends subdivision (b)(10) of section 361.5 does not apply because she made reasonable efforts to treat her mental illness. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in July 2018 when mother gave birth prematurely to a daughter, S.H. Mother reported she suffered from depression and anxiety and was prescribed two psychotropic medications but was not taking them. She believed her depression was getting worse. She had been struggling with suicidal thoughts since 2014 and had attempted suicide on multiple occasions, resulting in over 15 involuntary detentions. (§ 5150.)[2] She denied, however, any recent suicide attempts, refuting a report she tried to overdose on acetaminophen in April 2018, during her pregnancy. She explained she took too many acetaminophen in a short period of time, panicked and called 911. She did not know who fathered S.H. but identified several possibilities. Mother did not test positive for illicit substances at the time of S.H.'s birth.

The Stanislaus County Community Services Agency (agency) took S.H. into protective custody at the hospital, making her the fourth child removed from mother's custody because of her mental illness. In May 2014, mother's then seven-month-old son, Sebastian, was removed in Merced County after she attempted to commit suicide by ingesting over-the-counter medication and was involuntarily detained. Mother disclosed she had been diagnosed with bipolar disorder, posttraumatic stress disorder and

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[1] Statutory references are to the Welfare and Institutions Code.

[2] A person with a mental health disorder may be involuntarily detained for evaluation and treatment if considered a danger to self or others. (§ 5150, subd. (a).)

depression. The juvenile court ordered mental health services for mother and in May 2015, she completed a psychological evaluation. The psychologist opined she would not benefit from reunification services. The juvenile court terminated her services in August 2015 and granted Sebastian's father sole legal and physical custody in March 2016. Meanwhile, in February 2015, mother gave birth to Savannah, who was removed the following month after mother took 20-28 pills of her psychotropic medication and was involuntarily detained. Mother explained she had stopped taking her medication and everyone was "bugging" her, so she took the pills. At the dispositional hearing in July 2015, the court dismissed its jurisdiction, granted Savannah's father full legal and physical custody, and ordered visitation for mother. In August 2017, the court detained newborn Landon and ordered reunification services for mother and Landon's father, Kyle. Mother disclosed a history of having suicidal thoughts and that she had not taken her medication for over a year because she did not like how it made her feel. She left voice messages for Kyle when she was pregnant, threatening to end her life and kill the baby by overdosing on pills or hitting her stomach. She was evaluated in January and March 2018 by psychologists who opined she would not benefit from reunification services. The court returned Landon to Kyle's custody under family maintenance services and terminated mother's services. At the time of S.H.'s birth, Kyle had a restraining order protecting him from mother.

Kyle stated mother visited Landon once a month at the visitation center under supervision. He said she was mentally stable when taking her medication but prone to violence when not taking it. Mother claimed Kyle allowed her to see Landon whenever she wanted and regularly violated the restraining order.

The juvenile court ordered S.H. detained pursuant to a dependency petition filed by the agency and ordered the agency to arrange services for mother in Merced County. The court also allowed mother to visit S.H. in the hospital and ordered paternity testing

for Kyle. The agency provided mother with referrals for substance abuse and mental health assessments and a parenting class. Mother was assessed for substance abuse and deemed not in need of services. Paternity testing excluded Kyle as S.H.'s father.

On September 16, 2018, Kyle and mother were at a barbeque at her mother's house with Landon and Kyle's two-year-old son, Jordan. Mother was caught on video approaching Jordan from behind, grabbing him by the arm and throwing him to the ground. Jordan could be heard crying in pain. Two days later, Kyle went to the home where mother was staying and assaulted her, causing physical injuries. Kyle claimed he went to see mother and slapped his phone out of her hand after she yelled " 'Rape' " and threatened to call the police. He denied being violent with her. Both were arrested, Kyle for felony spousal abuse and intimidating a witness, and mother for child endangerment. The agency took Landon into protective custody and filed a supplemental petition (§ 387).

In October 2018, S.H. was discharged from the hospital and the agency placed her in foster care. Mother told the social worker she intended to resume taking her medication.

The agency recommended the juvenile court adjudge S.H. a dependent child and deny mother reunification services under section 361.5, subdivision (b)(10) because she had not addressed her mental illness. She refused to admit she had a mental health condition and to take medication for it and she missed her appointment for a mental health assessment. The agency also recommended the court deny services to S.H.'s alleged fathers (§ 361.5, subd. (a)).

The juvenile court appointed a guardian ad litem for mother and conducted a contested jurisdictional/dispositional hearing in January 2019. The agency filed an addendum report stating mother was attending parenting classes in Merced and taking her

prescribed psychotropic medications. She had an appointment on January 18, 2019, for psychiatric treatment and a referral for mental health counseling.

Mother testified she was involuntarily detained approximately six weeks before the hearing. As a result, she completed a psychological evaluation and was prescribed a new medication. She had been regularly taking the medication since it was prescribed but could not remember the name of it and did not have the prescription with her. When her attorney asked what diagnosis she was given, minor's counsel objected on hearsay grounds. The court agreed it was hearsay but allowed it, stating it would give her testimony the appropriate weight. Mother said she was diagnosed with depression and schizophrenia for the first time. She understood that the new medication treated schizophrenia. She knew the medication was helping her because she no longer heard voices. She intended to remain medication compliant because she wanted to be S.H.'s mother and knew she could not do so without medication. She was also enrolled in a parenting class and had attended two classes and was going to see a counselor and a psychiatrist.

The juvenile court asked mother whether she was previously prescribed medication following an involuntary detention. She responded affirmatively but stated the medications were not the "right ones" and she was never diagnosed with schizophrenia. The court asked how she knew the previous medications were not efficacious and whether she informed the prescribing physician. She knew because she kept hearing voices. She informed the prescribing physician, who increased her dosage of psychotropic medication, which did not improve her condition but made her sleepy. Mother had been prescribed multiple medications but could not remember the names. She also informed the physicians prescribing those medications they were not efficacious.

Mother recalled being at a barbeque in September 2018 when law enforcement was called because she broke her mother's window. Asked if she also threw or pushed a

child, she responded, "Um, yes, but I was blacked out. I wasn't on my medicine." The court asked what medicine she was on that she was not taking. Mother said she was not prescribed any medication at that time and had not been on medication for two years. She said she experienced other blackouts during that two-year period and sought help through Behavioral Health in Stanislaus County. It took her a while to get back on medication, so she voluntarily sought psychiatric treatment.

The juvenile court asked mother how it could be assured that she would continue taking her medication as prescribed. She stated, "[b]ecause I want to be the mother to my child that I can be now." She agreed with Kyle's statement that her mental health was good when she was taking medication and she was violent when not taking it.

Mother's attorney made an offer of proof accepted by the court that the maternal grandfather would testify he saw mother regularly and had seen an improvement in her behavior since she started her new medication.

The juvenile court adjudged S.H. a dependent child as alleged in the petition and ordered her removed from mother's custody. The court also denied mother reunification services under section 361.5, subdivision (b)(10), finding her only effort to treat her mental illness occurred after receiving a new diagnosis. The court found her recent efforts did not suffice. The court also stated mother knew for a long time she had mental health problems that required medication management but refused to comply. She also acknowledged being mentally healthy when she was medication compliant. The court also denied the alleged fathers reunification services and set the section 366.26 hearing for May 16, 2019.

DISCUSSION

As a rule, the juvenile court is required to provide services to reunify a parent and child when it removes a child from parental custody. (§ 361.5, subd. (a).) However, subdivision (b) of section 361.5 exempts from reunification services " ' "those parents

who are unlikely to benefit " ' from such services or for whom reunification efforts are likely to be ' "fruitless." ' " (*Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1120.) The 17 different paragraphs set forth in subdivision (b) of section 361.5 are sometimes referred to as " 'bypass' " provisions. (*Melissa R. v. Superior Court* (2012) 207 Cal.App.4th 816, 821.)

Once it has been determined one of the bypass provisions applies, "the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) Thus, if the juvenile court finds a provision of section 361.5, subdivision (b) applies, the court "shall not order reunification for [the] parent … unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c)(2).)

Here, the juvenile court denied mother reunification services under section 361.5, subdivision (b)(10). To do so, the court had to find by clear and convincing evidence "the court ordered termination of reunification services for any siblings or half siblings of the child because the parent … failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent … and that parent … has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent …." (§ 361.5, subd. (b)(10).)

"We review an order denying reunification services under subdivision (b) of section 361.5 for substantial evidence. [Citation.] Under such circumstances, we do not make credibility determinations or reweigh the evidence. [Citation.] Rather, we 'review the entire record in the light most favorable to the trial court's findings to determine if there is substantial evidence in the record to support those findings.' [Citation.] In doing so, we are mindful of the higher standard of proof required in the court below when

reunification bypass is ordered." (*Jennifer S. v. Superior Court*, *supra*, 15 Cal.App.5th at pp. 1121-1122.)

Mother contends subdivision (b)(10) of section 361.5 does not apply—not because her reunification services were not previously terminated—but because any efforts she might have made before being properly diagnosed were futile and her efforts afterward were reasonable. We disagree.

Although the standard under section 361.5, subdivision (b)(10) for assessing the reasonableness of a parent's efforts is *not* success, nor is it *any* effort by a parent, "even if clearly genuine," to address the problems leading to the child's removal. Instead, what is reasonable depends on the duration, extent and context of the parent's efforts as well as factors relating to the quantity and quality of those efforts. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914-915.)

Here, mother had a longstanding, serious mental illness, which she admittedly neglected by not taking her prescribed medication. As a result, she was suicidal, erratic and volatile. Each child she bore was removed from her custody because she could not safely parent them.

Mother argues, however, her efforts to treat her mental illness can only be properly assessed from the time she was diagnosed with and treated for schizophrenia, which was six weeks before the dispositional hearing. Prior to that, the doctors were treating her for other diagnoses, i.e., depression, bipolar disorder and anxiety. Thus, her efforts during that time were futile. However, once the doctors started treating her for schizophrenia and she became medication compliant, her condition improved. From that point on, her efforts were reasonable. Therefore, she argues, the bypass provision did not apply.

As we stated above, the standard under the statute is not success. Had mother been taking her medication, the juvenile court could have considered her efforts

reasonable even if the doctors were treating the wrong diagnosis. However, there is no evidence that there were misdiagnoses. According to the record, mother was originally diagnosed with depression, bipolar disorder and anxiety and prescribed medication accordingly. She was subsequently diagnosed with schizophrenia and depression. There is no evidence, however, that the newly diagnosed schizophrenia eliminated the prior diagnoses of bipolar disorder and anxiety or that they were misdiagnoses. Nor is there any evidence that the medication prescribed for those conditions was not effective. On the contrary, according to Kyle, mother's mental health improved when she took her medication, and mother agreed. The juvenile court could properly infer from that evidence mother received some benefit from the psychotropic medication prescribed for her other mental health conditions and, therefore, compliance with treatment would not have been futile and her noncompliance was not reasonable. The court could also conclude, based on her extensive history of mental illness and noncompliance, that six weeks of compliance was insufficient to find she made reasonable efforts to treat her mental illness.

We conclude substantial evidence supports the juvenile court's finding that section 361.5, subdivision (b)(10) applied. Since mother does not argue the court erred in not finding reunification services would serve S.H.'s best interest, we do not address it.

DISPOSITION

The petition for extraordinary writ is denied. This court's opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.